

SCOTT COUNTY ENGINEER'S OFFICE

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County Engineer

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Assistant County Engineer

TARA YOUNGERS
Senior Administrative Assistant

MEMO

TO: Mahesh Sharma
County Administrator

FROM: Angie Kersten, P.E.
County Engineer

SUBJ: Professional Design Services for Road and Stormwater Reconstruction Projects in
Unincorporated Mt. Joy

DATE: April 4, 2023

In November 2021, reconstruction of the roads and stormwater infrastructure in the unincorporated Mt. Joy area north of 210th Street was presented to the Board of Supervisors for consideration of American Rescue Plan Act (ARPA) funding. The total cost of the project was estimated at \$5,000,000. The Board provided our department with direction to move forward with developing the project. We then programmed and budgeted \$5,000,000 (ARPA funding) in FY2024 of our Five Year Construction Program for a road and stormwater reconstruction project in Mt. Joy.

In March 2022, our department entered into a contract with MSA Professional Services (MSA) to complete a stormwater drainage system analysis in the unincorporated Mt. Joy area north of 210th Street. MSA has been working on completing the analysis over the past year. We have met with them monthly to discuss the analysis and work through conceptual solutions. As the work has progressed, it became apparent that the reconstruction project would exceed the original estimate of \$5,000,000. During FY2024 budget discussions in February 2023, we requested that the budget for the project be increased to \$6,500,000 of ARPA funding.

In regards to the stormwater analysis, an urban stormwater management system is typically designed utilizing the concept of minor and major storm events. The minor storm drainage system should be designed to provide protection against regularly recurring damage, reduce street and stormwater conveyance maintenance costs, provide an orderly urban drainage system, and provide convenience and protection to the urban residents. Storm sewer systems consisting of underground piping, natural drainage ways, and other required appurtenances are considered a part of the minor storm drainage system.

The major storm drainage system should be designed to reduce the risk of substantial damage to primary structures from the stormwater runoff expected from the major storm. The effects of the major storm on the minor drainage system should also be noted.

MSA has completed the stormwater analysis. The existing conditions were modeled for both minor and major storms. In general, much of the existing stormwater systems failed one or both storm events. Additionally, the road and stormwater infrastructure is in very poor condition. It has been determined that the existing system is not salvageable and a complete stormwater system redesign with full road reconstruction is required. Conceptual solutions were developed, as part of the analysis, and the project cost is now estimated at \$13,200,000.

We recognized that we do not have sufficient funding to complete all of the proposed work in FY2024. We asked MSA to subdivide the improvements into three separate projects (Area #1, Area #2, and Area #3). Please see page 16 of the attached contract for the location of each project area. The preliminary cost to reconstruct each project is estimated at:

- Area #1: \$7,500,000
- Area #2: \$3,200,000
- Area #3: \$2,500,000

In our memo to the Board of Supervisors for approval of the stormwater drainage system analysis project, we stated upon completion of the analysis that we will review the proposed conceptual solutions and determine if improvements can be made in compliance with ARPA requirements. Additionally, that we may negotiate a contract with MSA for professional road and drainage system design of the proposed solutions and that a contract would be brought to the Board of Supervisors for approval at that time.

This review has been completed and improvements can be made in compliance with ARPA requirements. Since the estimated construction cost exceeds the available ARPA funding, the project has been subdivided into three separate stand-alone projects. Ideally, we could complete the first project (Area #1) with ARPA funding and complete the other two projects in the future when funding is available. MSA submitted a scope of work for professional design services completed on a fixed fee basis and additional as needed permitting and geotechnical engineering services on an estimated fee basis (under an attached rate schedule):

- Fixed Fee Professional Design Services: \$561,600
- Estimated Fee for Time & Materials Services: \$69,100
- ESTIMATED TOTAL: \$630,700**

The project design fee is approximately 4.8% of the total project construction estimate of \$13,200,000. Typical professional design services can cost around 10% of total project construction estimates. Based on MSA's prior work completed on this project, the quality of deliverable documents they submitted with the stormwater analysis, the experience of their project team and key members, their history of completing work as scheduled, responsiveness to questions, and reasonable fee; I recommend entering into a contract with MSA to perform professional design services for this project.

The fee to perform this work is partially included in our amended FY2023 budget (\$345,000). The design work will carry-over into FY2024. I will request an amendment to our FY2024 budget for the remaining fees (~\$285,700). We have sufficient funds in our secondary road fund balance to allocate towards this project.

Rob Cusack has reviewed the contract and responded that it is sufficiently drafted to accomplish its intended purpose. I recommend that Scott County enter into an agreement with MSA Professional Services, Inc., to perform this work for a fixed fee cost of \$561,600 and an estimated additional cost of \$69,100 for permitting and geotechnical services (these services will be on a time and materials fee). Included with this memo is the contract provided by MSA.



Professional Services Agreement

MSA Project Number: 13759007

This AGREEMENT (Agreement) is made today April 13, 2023 by and between SCOTT COUNTY IOWA (OWNER) and MSA PROFESSIONAL SERVICES, INC. (MSA), which agree as follows:

Project Name: Scott County Iowa Road Reconstruction with Stormwater improvements in Unincorporated Mt. Joy

The scope of the work authorized is: See Attachment B

The fee for lump sum phased work is: \$561,600.00

The estimated fee for time and materials phased work: \$69,100.00

All services shall be performed in accordance with the General Terms and Conditions of MSA, which is attached and made part of this Agreement. Any attachments or exhibits referenced in this Agreement are made part of this Agreement. Payment for these services will be on a lump sum basis for the following phases: *Project Management & Administration, Data Collection, Engineering Design & Construction Documents and Bidding of Area #1*. Payment for these services will be on a time and materials fee for the following phases: *Permitting and Soil Borings*. A list of reimbursable expenses is included on the attached rate schedule.

Approval: Authorization to proceed is acknowledged by signatures of the parties to this Agreement.

SCOTT COUNTY, IOWA

MSA PROFESSIONAL SERVICES, INC.

Angela Kersten, PE
County Engineer
Date: _____

Jason Miller, PE
Service Line Leader
Date: 04/06/2023

950 E. Blackhawk Trail
Eldridge, Iowa 52748
Phone: (563) 326-8640

Amber Converse
Project Manager
Date: 04/06/2023

2117 State St, #200
Bettendorf, IA 52722
Phone: (563) 445-3501

**ATTACHMENT A:
RATE SCHEDULE**

<u>CLASSIFICATION</u>	<u>LABOR RATE</u>
Administrative	\$ 85 – \$140/hr.
Architects	\$ 70 – \$205/hr.
Community Development Specialists	\$140 – \$175/hr.
Digital Design.....	\$165 – \$180/hr.
Environmental Scientists/Hydrogeologists.....	\$100 – \$170/hr.
Geographic Information Systems (GIS).....	\$ 90 – \$175/hr.
Housing Administration	\$ 90 – \$160/hr.
Inspectors/Zoning Administrators	\$100 – \$120/hr.
IT Support	\$165 – \$180/hr.
Land Surveying.....	\$ 90 – \$175/hr.
Landscape Designers & Architects.....	\$ 70 – \$205/hr.
Planners.....	\$ 95 – \$160/hr.
Principals	\$200 – \$300/hr.
Professional Engineers/Designers of Engineering Systems	\$140 – \$175/hr.
Project Managers.....	\$145 – \$220/hr.
Real Estate Professionals	\$130 – \$145/hr.
Staff Engineers	\$ 70 – \$130/hr.
Technicians.....	\$ 90 – \$140/hr.
Wastewater Treatment Plant Operator.....	\$ 85 – \$105/hr.

REIMBURSABLE EXPENSES

Copies/Prints	Rate based on volume
Specs/Reports.....	\$10
Copies.....	\$0.20/page
Plots	\$0.015/sq.in.
Flash Drive	\$10
GPS Equipment	\$30/hour
Laser Level	\$10/per day
Mailing/UPS	At cost
Mileage – Reimbursement	IRS Rate – IRS Rate + \$5/day
Mileage – MSA Vehicle	\$0.70 mile
Nuclear Density Testing	\$25.00/day + \$10/test
Organic Vapor Field Meter	\$100/day
PC/CADD Machine	Included in labor rates
Robotic Survey Equipment.....	\$40/hour
Stakes/Lath/Rods.....	At cost
Travel Expenses, Lodging, & Meals.....	At cost
Traffic Counting Equipment & Data Processing.....	At cost
Geodimeter	\$30/hour
Drone Flight	\$390/flight

Labor rates represent an average or range for a particular job classification. These rates are in effect until December 31, 2023.

**MSA PROFESSIONAL SERVICES, INC. (MSA)
GENERAL TERMS AND CONDITIONS OF SERVICES (PUBLIC)**

1. **Scope and Fee.** The scope of Owner's Project (the "Project"), scope of MSA's services (the "Work"), and quoted fees for those services are defined in Attachment A. The scope and fee constitute a good faith estimate of the tasks and associated fees required to perform the services defined in Attachment A. This agreement upon execution by both parties hereto, can be amended only by written instrument signed by both parties. For those projects involving conceptual or process development service or involve renovation of an existing building or structure, activities often cannot be fully defined during initial planning. As the Project progresses, facts uncovered may reveal a change in direction which may alter the Work. MSA will promptly inform the OWNER in writing of such situations so that changes in this agreement can be made as required.

2. **Owner's Responsibilities.**

(a) Project Scope and Budget

The OWNER shall define the scope and budget of the Project and, when applicable, periodically update the Project budget, including that portion allocated for the cost of the Work. The Project budget shall include contingencies for design, development, and, when required by the scope of the Project, construction of the Project. The OWNER shall not significantly increase or decrease the overall Project scope or schedule, the portion of the budget allocated for the cost of the Work, or contingencies included in the overall budget or a portion of the budget, without the agreement of MSA to a corresponding change in the Project scope, quality, schedule, and compensation of MSA.

(b) Designated Owner Representative

The OWNER shall identify a Designated Representative who shall be authorized to act on behalf of the OWNER with respect to the Project. OWNER's Designated Representative shall render related decisions in a timely manner so as to avoid unreasonable delay in the orderly and sequential progress of MSA's services. MSA shall not be liable for any error or omission made by OWNER, OWNER's Designated Representative, or OWNER's consultant.

(c) Tests, Inspections, and Reports

When required by the scope of the Project, the OWNER shall furnish tests, inspections, and reports required by law or the Contract Documents, such as planning studies; preliminary designs; structural, mechanical, or chemical tests; tests for air, water, or soil pollution; and tests for hazardous materials.

(d) Additional Consultants

MSA's consultants shall be identified in Attachment A. The OWNER shall furnish the services of other consultants other than those designated in Attachment A, including such legal, financial, accounting, and insurance counseling services as may be required for the Project.

(e) OWNER Provided Services and Information

MSA shall be entitled to rely on the accuracy and completeness of services and information furnished by the OWNER, Designated OWNER Representative, or Consultant. MSA shall use reasonable efforts to provide prompt written notice to the OWNER if MSA becomes aware of any errors, omissions, or inconsistencies in such services or information.

3. **Billing.** MSA will bill the OWNER monthly with net payment due upon receipt. Balances due past thirty (30) days shall be subject to an interest charge at a rate of 12% per year from said thirtieth day. In addition, MSA may, after giving seven days written notice, suspend service under any agreement until the OWNER has paid in full all amounts due for services rendered and expenses incurred, including the interest charge on past due invoices.

4. **Costs and Schedules.** Costs (including MSA's fees and reimbursable expenses) and schedule commitments shall be subject to change for delays caused by the OWNER's failure to provide specified facilities or information or for delays caused by unpredictable occurrences including, without limitation, fires, floods, riots, strikes, unavailability of labor or materials, delays or defaults, by suppliers of materials or services, process shutdowns, pandemics, acts of God or the public enemy, or acts of regulations of any governmental agency. Temporary delays of services caused by any of the above which result in additional costs beyond those outlined may require renegotiation of this agreement.

5. **Access to Site.** Owner shall furnish right-of-entry on the Project site for MSA and, if the site is not owned by Owner, warrants that permission has been granted to make planned explorations pursuant to the scope of

services. MSA will take reasonable precautions to minimize damage to the site from use of equipment, but has not included costs for restoration of damage that may result and shall not be responsible for such costs.

6. **Location of Utilities.** Owner shall supply MSA with the location of all pre-existent utilities and MSA has the right to reasonably rely on all Owner supplied information. In those instances where the scope of services require MSA to locate any buried utilities, MSA shall use reasonable means to identify the location of buried utilities in the areas of subsurface exploration and shall take reasonable precautions to avoid any damage to the utilities noted. However, Owner agrees to indemnify and defend MSA in the event of damage or injury arising from damage to or interference with subsurface structures or utilities which result from inaccuracies in information of instructions which have been furnished to MSA by others.

7. **Professional Representative.** MSA intends to serve as the OWNER's professional representative for those services as defined in this agreement, and to provide advice and consultation to the OWNER as a professional. Any opinions of probable project costs, reviews and observations, and other recommendations made by MSA for the OWNER are rendered on the basis of experience and qualifications and represents the professional judgment of MSA. However, MSA cannot and does not warrant or represent that proposals, bid or actual project or construction costs will not vary from the opinion of probable cost prepared by it.

8. **Construction.** When applicable to the scope of the Project, the OWNER shall contract with a licensed and qualified Contractor for implementation of construction work utilizing a construction contract based on an EJCDC construction contract and general conditions appropriate for the scope of the Project and for the delivery method. In the construction contract, the OWNER shall use reasonable commercial efforts to require the Contractor to (1) obtain Commercial General Liability Insurance with contractual liability coverage insuring the obligation of the Contractor, and name the OWNER, MSA and its employees and consultants as additionally insureds of that policy; (2) indemnify and hold harmless the OWNER, MSA and its employees and consultants from and against any and all claims, damages, losses, and expenses ("Claims"), including but not limited to reasonable attorney's fees and economic or consequential damages arising in whole or in part out of the negligent act or omission of the contractor, and Subcontractor or anyone directly or indirectly employed by any of them. This agreement shall not be construed as giving MSA, the responsibility or authority to direct or supervise construction means, methods, techniques, sequence, or procedures of construction selected by the contractors or subcontractors or the safety precautions and programs incident to the work, the same being the sole and exclusive responsibility of the contractors or subcontractors.

9. **Standard of Care.** In conducting the services, MSA will apply present professional, engineering and/or scientific judgment, which is known as the "standard of care". The standard of care is defined as that level of skill and care ordinarily exercised by members of the same profession practicing at the same point in time and in the same or similar locality under similar circumstances in performing the Services. The OWNER acknowledges that "current professional standards" shall mean the standard for professional services, measured as of the time those services are rendered, and not according to later standards, if such later standards purport to impose a higher degree of care upon MSA.

MSA does not make any warranty or guarantee, expressed or implied, nor have any agreement or contract for services subject to the provisions of any uniform commercial code. Similarly, MSA will not accept those terms and conditions offered by the OWNER in its purchase order, requisition, or notice of authorization to proceed, except as set forth herein or expressly agreed to in writing. Written acknowledgement of receipt, or the actual performance of services subsequent to receipt of such purchase order, requisition, or notice of authorization to proceed is specifically deemed not to constitute acceptance of any terms or conditions contrary to those set forth herein.

10. **Municipal Advisor.** MSA Professional Services, Inc. is not acting as a 'Municipal Advisor' to the owner pursuant to Section 15B of the Exchange Act. For financial advice related to the corresponding project, the client is encouraged to discuss their finances with internal and/or external advisors and experts before making decisions incurring debt and/or supporting those obligations. MSA desires to serve each client well by providing the best information publicly available and is providing information as part of its engineering responsibilities to inform client options. The information is not intended to provide financial advice or recommendations and is not bound by the formal Municipal Advisor fiduciary duty.

11. **Conduct Expectations.** Owner and MSA understand their respective obligations to provide a safe, respectful work environment for their employees. Both parties agree that harassment on the job (unwelcome

verbal, physical or other behavior that is related to sex, race, age, or protected class status) will not be tolerated and will be addressed timely and in compliance with anti-harassment laws.

12. Electronic Documents and Transmittals. Owner and MSA agree to transmit and accept project related correspondence, documents, text, data, drawings and the like in digital format in accordance with MSA's Electronic Data Transmittal policy. Each party is responsible for its own cybersecurity, and both parties waive the right to pursue liability against the other for any damages that occur as a direct result of electronic data sharing.

13. Building Information Modelling (BIM). For any projects, and not limited to building projects, utilizing BIM, OWNER and MSA shall agree on the appropriate level of modelling required by the project, as well as the degree to which the BIM files may be made available to any party using the Electronic Document Transmittal provisions of section 12 of this Agreement.

14. Construction Site Visits. If the scope of services includes services during the Construction Phase, MSA shall make visits to the site as specified in Attachment A– Scope of Services. MSA shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct or have control over Contractor's work nor shall MSA have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by Contractor, for safety precautions and programs incident to the work of Contractor or for any failure of Contractor to comply with laws, rules, regulations, ordinances, codes or orders applicable to Contractor's furnishing and performing the work. Accordingly, MSA neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.

15. Termination. This Agreement shall commence upon execution and shall remain in effect until terminated by either party, at such party's discretion, on not less than thirty (30) days' advance written notice. The effective date of the termination is the thirtieth day after the non-terminating party's receipt of the notice of termination. If MSA terminates the Agreement, the OWNER may, at its option, extend the terms of this Agreement to the extent necessary for MSA to complete any services that were ordered prior to the effective date of termination. If OWNER terminates this Agreement, OWNER shall pay MSA for all services performed prior to MSA's receipt of the notice of termination and for all work performed and/or expenses incurred by MSA in terminating Services begun after MSA's receipt of the termination notice. Termination hereunder shall operate to discharge only those obligations which are executory by either party on and after the effective date of termination. These General Terms and Conditions shall survive the completion of the services performed hereunder or the Termination of this Agreement for any cause.

This agreement cannot be changed or terminated orally. No waiver of compliance with any provision or condition hereof should be effective unless agreed in writing and duly executed by the parties hereto.

16. Betterment. If, due to MSA's error, any required or necessary item or component of the Project is omitted from the construction documents, MSA's liability shall be limited to the reasonable costs of correction of the construction, less what OWNER'S cost of including the omitted item or component in the original construction would have been had the item or component not been omitted. It is intended by this provision that MSA will not be responsible for any cost or expense that provides betterment, upgrade, or enhancement of the Project.

17. Hazardous Substances. OWNER acknowledges and agrees that MSA has had no role in identifying, generating, treating, storing, or disposing of hazardous substances or materials which may be present at the Project site, and MSA has not benefited from the processes that produced such hazardous substances or materials. Any hazardous substances or materials encountered by or associated with Services provided by MSA on the Project shall at no time be or become the property of MSA. MSA shall not be deemed to possess or control any hazardous substance or material at any time; arrangements for the treatment, storage, transport, or disposal of any hazardous substances or materials, which shall be made by MSA, are made solely and exclusively on OWNER's behalf for OWNER's benefit and at OWNER's direction. Nothing contained within this Agreement shall be construed or interpreted as requiring MSA to assume the status of a generator, storer, treater, or disposal facility as defined in any federal, state, or local statute, regulation, or rule governing treatment, storage, transport, and/or disposal of hazardous substances or materials.

All samples of hazardous substances, materials or contaminants are the property and responsibility of OWNER and shall be returned to OWNER at the end of a project for proper disposal. Alternate arrangements to ship such samples directly to a licensed disposal facility may be made at OWNER's request and expense and subject to this subparagraph.

18. Insurance. MSA will maintain insurance coverage for: Worker's Compensation, General Liability, and Professional Liability. MSA will provide information as to specific limits upon written request. If the OWNER requires coverages or limits in addition to those in effect as of the date of the agreement, premiums for additional insurance shall be paid by the OWNER. The liability of MSA to the OWNER for any indemnity commitments, or for any damages arising in any way out of performance of this contract is limited to such insurance coverages and amount which MSA has in effect.

19. Reuse of Documents. Reuse of any documents and/or services pertaining to this Project by the OWNER or extensions of this Project or on any other project shall be at the OWNER's sole risk. The OWNER agrees to defend, indemnify, and hold harmless MSA for all claims, damages, and expenses including attorneys' fees and costs arising out of such reuse of the documents and/or services by the OWNER or by others acting through the OWNER.

20. Indemnification. To the fullest extent permitted by law, MSA shall indemnify and hold harmless, OWNER, and OWNER's officers, directors, members, partners, consultants, and employees (hereinafter "OWNER") from reasonable claims, costs, losses, and damages arising out of or relating to the PROJECT, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of MSA or MSA's officers, directors, members, partners, employees, or Consultants (hereinafter "MSA"). In no event shall this indemnity agreement apply to claims between the OWNER and MSA. This indemnity agreement applies solely to claims of third parties. Furthermore, in no event shall this indemnity agreement apply to claims that MSA is responsible for attorneys' fees. This agreement does not give rise to any duty on the part of MSA to defend the OWNER on any claim arising under this agreement.

To the fullest extent permitted by law, OWNER shall indemnify and hold harmless, MSA, and MSA's officers, directors, members, partners, consultants, and employees (hereinafter "MSA") from reasonable claims, costs, losses, and damages arising out of or relating to the PROJECT, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of the OWNER or the OWNER's officers, directors, members, partners, employees, or Consultants (hereinafter "OWNER"). In no event shall this indemnity agreement apply to claims between MSA and the OWNER. This indemnity agreement applies solely to claims of third parties. Furthermore, in no event shall this indemnity agreement apply to claims that the OWNER is responsible for attorneys' fees. This agreement does not give rise to any duty on the part of the OWNER to defend MSA on any claim arising under this agreement.

To the fullest extent permitted by law, MSA's total liability to OWNER and anyone claiming by, through, or under OWNER for any cost, loss or damages caused in part or by the negligence of MSA and in part by the negligence of OWNER or any other negligent entity or individual, shall not exceed the percentage share that MSA's negligence bears to the total negligence of OWNER, MSA, and all other negligent entities and individuals.

21. Accrual of Claims. To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Agreement will be deemed to have accrued, and all statutory periods of limitation will commence, no later than the date of Substantial Completion; or, if Engineer's services do not include Construction Phase services, or the Project is not completed, then no later than the date of Owner's last payment to Engineer.

22. Dispute Resolution. OWNER and MSA desire to resolve any disputes or areas of disagreement involving the subject matter of this Agreement by a mechanism that facilitates resolution of disputes by negotiation rather than by litigation. OWNER and MSA also acknowledge that issues and problems may arise after execution of this Agreement which were not anticipated or are not resolved by specific provisions in this Agreement. Accordingly, both OWNER and MSA will endeavor to settle all controversies, claims, counterclaims, disputes, and other matters in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect, unless OWNER and MSA mutually agree otherwise. Demand for mediation shall be filed in writing with the other party to this Agreement. A demand for mediation shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations. Neither demand for mediation nor any term of this Dispute Resolution clause shall prevent the filing of a legal action

where failing to do so may bar the action because of the applicable statute of limitations. If despite the good faith efforts of OWNER and MSA any controversy, claim, counterclaim, dispute, or other matter is not resolved through negotiation or mediation, OWNER and MSA agree and consent that such matter may be resolved through legal action in the court having jurisdiction as specified in section 29 of this Agreement.

23. **Exclusion of Special, Indirect, Consequential and Liquidated Damages.** MSA shall not be liable, in contract or tort or otherwise, for any special, indirect, consequential, or liquidated damages including specifically, but without limitation, loss of profit or revenue, loss of capital, delay damages, loss of goodwill, claim of third parties, or similar damages arising out of or connected in any way to the Project or this contract.

24. **Limitation of Liability.** Neither MSA, its Consultants (if any), nor their employees shall be jointly, severally, or individually liable to the OWNER in excess of the amount of the insurance proceeds available.

25. **Successors and Assigns.** The successors, executors, administrators, and legal representatives of Owner and Engineer are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement. Neither party may assign, sublet, or transfer any rights under or interest (including, but without limitation, claims arising out of this Agreement or money that is due or may become due) in this Agreement without the written consent of the other party, which shall not be unreasonable withheld, except to the extent that any assignment, subletting, or transfer is mandated by law.

26. **Notices.** Any notice required under this Agreement will be in writing, and delivered: in person (by commercial courier or otherwise); by registered or certified mail; or by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line. All such notices are effective upon the date of receipt.

27. **Survival.** Subject to applicable Laws and Regulations, all express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

28. **Severability.** Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and MSA.

29. **No Waiver.** A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Agreement.

30. **State Law.** This agreement shall be construed and interpreted in accordance with the laws of the State of Wisconsin.

31. **Jurisdiction.** OWNER hereby irrevocably submits to the jurisdiction of the state courts of the State of Wisconsin for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement. OWNER further consents that the venue for any legal proceedings related to this Agreement shall be Sauk County, Wisconsin.

32. **Understanding.** This agreement contains the entire understanding between the parties on the subject matter hereof and no representations. Inducements, promises or agreements not embodied herein (unless agreed in writing duly executed) shall be of any force or effect, and this agreement supersedes any other prior understanding entered into between the parties on the subject matter hereto.

ATTACHMENT B

SCOPE OF PROFESSIONAL SERVICES

The proposed project consists of the full reconstruction of multiple roadways matching the existing roadway typical section with storm sewer collection & conveyance system including the following roadway sections:

- **Area 1** – As shown in the attached exhibit.
 - 210th St from the western ROW of the UP Railroad Crossing to the western onramps of US Hwy 61.
 - Brady St from 210th St to the north end of Brady St; approximately 200 feet north of 214th St.
 - 214th St from Brady St to the west end of 214th St; approximately 200 feet west of 215th St.
 - 215th St from 214th St to the north end of 215th St; approximately 250 feet north of 214th St.
 - Regrading of approximately 650 feet of the ditch running along the eastern side of the CP Railroad and the northern side of 210th St.
 - Regrading of approximately 700 feet of the ditch running along the west side of US Hwy 61 north of Brady St.

- **Area 2** – As shown in the attached exhibit.
 - 210th St from the eastern property line of 200 E 90th St to the western ROW of the UP Railroad Crossing.

- **Area 3** – As shown in the attached exhibit.
 - Holden Dr from 210th St to Brady St

The above project limits are depicted on the attached exhibit. According to a cost opinion provided by MSA in a prior study, construction costs are budgeted at approximately \$7,420,000. Conceptual phasing is **identified in the attached Exhibit A** as discussed at the March 20, 2023 meeting with County Engineering. Anticipated funding for the project includes American Rescue Plan Act (ARPA) and will be locally let.

The following lists the professional services that shall be provided by MSA by and/or under the direct supervision of a Professional Engineer and/or Professional Land Surveyor licensed to practice in the State of Iowa, as applicable.

Fee breakdown will be as follows:

Lump sum phased work includes Project Management & Administration, Data Collection, Engineering Design & Construction Documents, and Bidding of Area #1.

Estimated fee for time and materials phased work includes Permitting.

Project Management & Administration (LUMP SUM)

MSA shall manage & coordinate project team, budget & schedules including the following:


- Provide general project management & administration duties including coordination with County staff, review of project costs, invoices & general administrative activities.
- Maintain communication with County staff throughout the design.
- Provide monthly progress update to County.
- Employ documented QA-QC procedures throughout the design of the project.

MSA shall prepare and attend design review meetings (virtual or combination live/virtual) including the following:

- Monthly meetings with County staff during project duration.
- Kick-off Meeting: Meet with County to conduct an initial kick-off meeting & discuss project specifics and expectations. Specific project personnel shall be identified & channels of communication established
- One meeting with County staff to review existing concept, project budgets, known challenges, design constraints & other project specifics.
- Schedule, coordinate & attend one (1) joint meeting of utility companies to discuss project.
- Conceptual (50%) design review. Coordinate with County & Iowa DOT.
- Check (90%) plans review. Coordinate with County & Iowa DOT.
- Final (100%) plan review with County & Iowa DOT.

Data Collection (LUMP SUM)

MSA shall conduct research as necessary to obtain the plats of affected parcels, locate existing property corners, establish right-of-way location, establish vertical-horizontal control, and perform the boundary-topographic surveys for the project corridor. MSA shall coordinate with Iowa One-Call to determine the location of existing utilities and the desired placement for proposed utilities. A base survey drawing showing the location of public utilities as located by Iowa One-Call shall be prepared. Tasks include the following:

- Conduct parcel research to identify existing right-of-way & to obtain plats of record for the project corridor & adjacent parcels.
- One (1) site visit to perform reconnaissance required to verify the presence of property pins & to identify existing site cover & conditions.
- Conduct survey fieldwork to gather existing boundary data, topographic info & existing utility locations as identified by private utility companies & County along project corridor.
- Establish control points with known vertical & horizontal coordinates.
- Incorporate previously collected survey data related to the storm water evaluation performed by MSA in 2022/2023 **as defined in the attached survey extents Exhibit B.**
- Prepare a base map indicating locations of above ground contours, underground utilities, parcel data, property lines & contours at 1-foot intervals to document the existing site conditions for the project corridors.
- MSA has teamed with Terracon to perform wetland investigation and/or delineation within existing railroad ditches. 

Assumptions

- MSA will not require special permissions from property owners to access sites where survey needs to be conducted
- Confined space entry will not be required to conduct surveys
- All structures are identifiable & accessible, i.e. not buried, bolted or welded shut.
- MSA assumes that flagging is **not** required for data collection efforts along the railroad.

Deliverables

MSA shall provide the following deliverables:

- Existing conditions base map and survey database.

Engineering Design & Construction Documents (LUMP SUM)

MSA shall complete engineering design & shall prepare up to three (3) separate bid packages of construction drawings (plans) and specifications to be used as the bidding & construction documents for each of the three areas identified in the attached exhibit. MSA shall prepare design documents for County & Iowa DOT review at intervals listed below. Tasks include the following:

- Develop preliminary engineering design & plans to include street layout & geometrics, driveways & storm sewer collection-conveyance system for each area listed above.
 - MSA will develop an exhibit regarding the proposed ditch regrading within Iowa DOT right-of-way for review and approval by the Iowa DOT prior to preparing preliminary design plans.
- Coordinate with the County, Geotechnical Engineer, and Iowa DOT on the proposed typical roadway section depending on jurisdiction & pavement determination as applicable. Does not include any variance request for non-conforming design.
- Engineering design for roadway reconstruction including driveways & intersections according to local standard; SUDAS design standards & specifications.
- Engineering design for the storm sewer collection & conveyance system improvements according to local standards; SUDAS design guidance.
- Revise and update the XP-SWMM model previously prepared of the area to confirm flood reduction goals are met with the design
- Utility coordination with local utility companies regarding existing utilities, potential utility conflicts, and required utility relocations.
- Provide exhibits to support public engagement process, led by the County.
- Preliminary Engineer's opinion of probable construction cost for each area.
- Traffic control plan, detour plan & construction phasing plan.
- Erosion & sediment control plan.
- Coordinate an internal review of the design for quality assurance & quality control.
- Revise the design according to County and/or Iowa DOT input. Finalize construction documents (plans & specifications) for each area for a locally letting.
- Prepare a final opinion of probable construction cost for each area based on the final construction documents & provide to County prior to the bid opening.
- Respond to Contractor questions during bidding process.

Deliverables

MSA shall provide the following deliverables for each area separately:

- Design plans will be provided in electronic PDF format.
- Concept (50%) design plans with construction cost opinion for each area.
- Check (90%) design plans with construction cost opinion for each area.
- Final (100%) design plans with construction cost opinion for each area.
- Provide final CAD design files as needed for bidding.

Permitting Services for all Areas and Soil Borings (TIME AND MATERIALS)

MSA has teamed with Terracon to perform sub-surface investigation (geotechnical engineering) and soil borings for the project.



- Soil borings will be completed along the roadway corridors. It is assumed that there will be 10 soil borings. A geotechnical report will be completed identifying geotechnical engineering evaluations and recommendations for the proposed roadway section.
- Soil borings will be completed at each railroad crossing. It is assumed that a total of 4 borings will be necessary for compliance with CP Railroad requirements. A separate geotechnical report will be completed identifying geotechnical engineering evaluations and recommendations for the storm sewer boring beneath the railroad right-of-way.

MSA will only undertake the following permitting tasks upon receipt of written authorization from the County.

MSA shall provide the following permitting services for **Area #1**:

- Prepare Stormwater Pollution Prevention Plan (SWPPP) & National Pollutant Discharge Elimination System (NPDES) stormwater discharge permit application.
- MSA shall complete the CP Railroad surface crossing permit application and submit to the CP Railroad for approval. This includes up an estimate of 8 hours of coordination with the Railroad.
- MSA shall complete the CP Railroad utility construction permit application and submit to the CP Railroad for approval. This includes an estimate of 8 hours of coordination with the Railroad
 - The County will be responsible for contracting with the geotechnical engineering sub-consultant to perform soil borings at each railroad crossing & prepare the engineering report.
 - MSA will assist the County in soliciting a 3rd party geotechnical review of site conditions as required by CP Railroad.
 - Fees associated with the soil borings at each railroad crossing and the 3rd party geotechnical review are not included in this scope.
- MSA shall complete the Iowa DOT work in the ROW permit application and submit to the Iowa DOT for approval. This includes an estimate of 8 hours of coordination with the Iowa DOT.
- MSA shall complete the Iowa DOT utility accommodation permit application and submit to the Iowa DOT for approval. This includes an estimate of 8 hours of coordination with the Iowa DOT.
- MSA shall coordinate an estimate of 6 hours with the City of Davenport regarding 90th Street reconstruction.

MSA shall provide the following permitting services for **Area #2 & #3**:

- Prepare Stormwater Pollution Prevention Plan (SWPPP) & National Pollutant Discharge Elimination System (NPDES) stormwater discharge permit application.
- MSA shall complete the Iowa DOT work in the ROW permit application and submit to the Iowa DOT for approval.

- MSA shall complete the Iowa DOT utility accommodation permit application and submit to the Iowa DOT for approval.

Deliverables

MSA shall provide the following deliverables:

- CP Railroad surface crossing permit application for Area 1.
- CP Railroad utility construction permit application for Area 1.
- Iowa DOT Work in ROW permit application for Area 1 & 2.
- Iowa DOT Utility Accommodation permit application for Area 1 & 2.
- NPDES stormwater discharge permit application for Areas 1, 2, & 3.
- Geotechnical report.

Assumptions

MSA shall provide the following deliverables:

- Additional permitting requirements are not required by CP Railroad, other than those listed above.
- Additional permitting requirements are not required by the Iowa DOT, other than those listed above.
- MSA assumes that flagging for the railroad is not required for data collection efforts.

County Responsibilities:

Count shall be responsible for the following:

- County is responsible for televising of existing storm sewer infrastructure as needed.
- County is responsible for preparing bidding Documents, Project Manual, and facilitating public bidding process.
- County is responsible for primary coordination with Iowa DOT.
- County is responsible for contracting with geotechnical engineering sub-consultant to perform soil borings along the roadway corridors & prepare an engineering report.
- County is responsible for contracting with geotechnical engineering sub-consultant to perform soil borings at railroad crossing & prepare an engineering report.
- County is responsible for primary coordination & communication with property owners including meetings, mailers, etc.
- County is responsible for coordination with DOT & sub-consultants regarding NEPA and/or SHPO clearances, environmental and/or historical reviews.
- County is responsible for all equipment and material selections.
- County is responsible for accuracy & completeness of the information provided to MSA including record drawings (as-builts) & maps of the existing utility systems.
- County will provide MSA with full information as to the requirements for the project.
- County to operate the utility systems (hydrants, valves, manholes, etc.) as needed for MSA to obtain required information for the completion of the project.
- County will authorize submittal of necessary permit applications & pay associated fees.
- County will coordinate all required land acquisition and/or easements identified during the design of the project. This includes any permanent utility easements and temporary construction easements. County will pay all costs & fees associated with land acquisition and/or easements including, but not limited to, legal survey, legal counsel, property owner negotiations & property owner compensation.
- County is responsible for bidding unless otherwise noted in scope of services.
- County is responsible for all permitting fees, and/or, review fees required by the permitting authority.
 - County is responsible for hiring 3rd party geotechnical review consultant as required by CP Railroad.
- County is responsible for design and coordination with the Railroad in regard to the proposed railroad crossing arm modifications which are anticipated to take place during or after Area #1 construction.
- County is responsible for public engagement process.

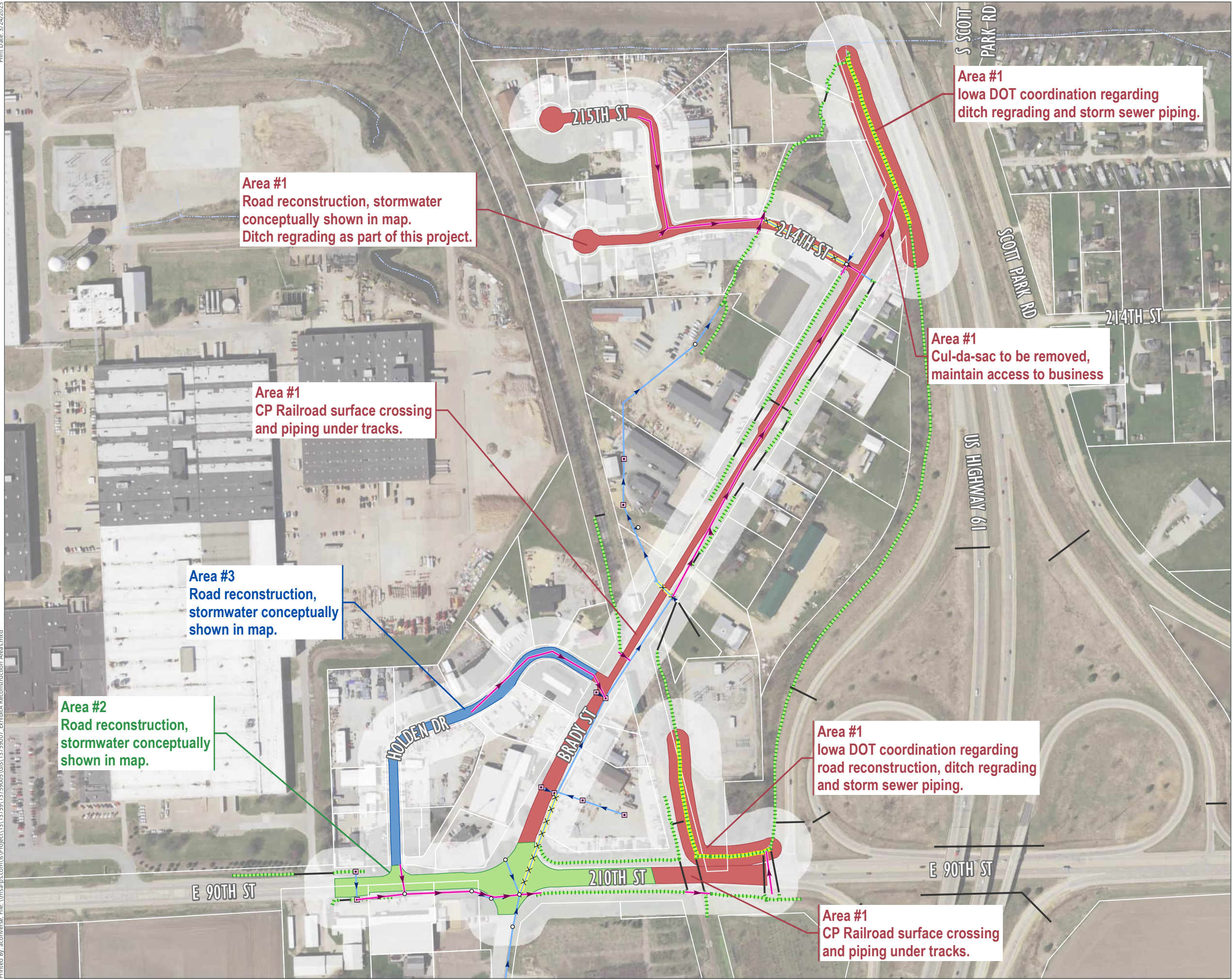
Additional Services:

Professional services are not included in the above Scope of Professional Services can be provided under separate contract or by amending this Agreement. Examples of additional services that may be necessary and/or desired for completion of the project include, but are not limited to the following:

- **Design and analysis of Intersection improvements modifications, specifically at 90th and Brady.**
- **Design and analysis of alternate typical roadway sections.**
- Bidding services for Areas #1, #2 or Area #3
- Construction related engineering services including, but not limited to general construction administration & management, attendance at preconstruction meeting, construction observation, construction staking & construction materials testing.
 - Additional meetings not specifically listed in the scope.
- Updates to County's electronic GIS.
- Wetland mitigation services.
- NEPA and/or SHPO clearances. Costs for these sub-consultants are excluded from agreement.
- Legal survey, property owner meetings, ROW acquisition and/or coordination.
- Any requirements related to State and/or Federal funds not specifically list above.
- Special assessment plat & schedule.
- Design beyond the project boundaries as depicted on the attached exhibit.
- Design related to sidewalk & ADA curb ramps.
- Design of utility systems beyond the stormwater collection & conveyance system (does not include design of sanitary sewer, water distribution system, etc.).
- Design of stormwater quality management practices.
- Municipal advisor services including utility rate reviews & pro forma.
- Funding applications, grant writing, and/or grant administration.
- All fees including, but not limited to, legal fees, permit application fees, etc.
- Permitting unless explicitly included in the Scope of Professional Services.
- Variance request including, but not limited to, Iowa DOT & Iowa DNR.
- Evaluation of existing distribution system including fire flows (hydrant flow testing).
- Utility system modeling, other than stormwater systems as described above.
- Roadway lighting and electrical engineering design.
- Accommodation of environmental hazards and/or endangered species.
- Archeological and/or historical review.
- Environmental evaluations and/or historical compliance review.
- Floodplain analysis and/or site assessment. Joint floodplain permit and/or 404 permit.
- NPDES stormwater discharge permit compliance (contractor responsibility).

Exhibit A Reconstruction Areas

Mt Joy
Scott County, IA



Area #1
Road reconstruction, stormwater conceptually shown in map.
Ditch regrading as part of this project.

Area #1
Iowa DOT coordination regarding ditch regrading and storm sewer piping.

Area #1
Cul-da-sac to be removed, maintain access to business

Area #1
CP Railroad surface crossing and piping under tracks.

Area #3
Road reconstruction, stormwater conceptually shown in map.

Area #2
Road reconstruction, stormwater conceptually shown in map.

Area #1
Iowa DOT coordination regarding road reconstruction, ditch regrading and storm sewer piping.

Area #1
CP Railroad surface crossing and piping under tracks.

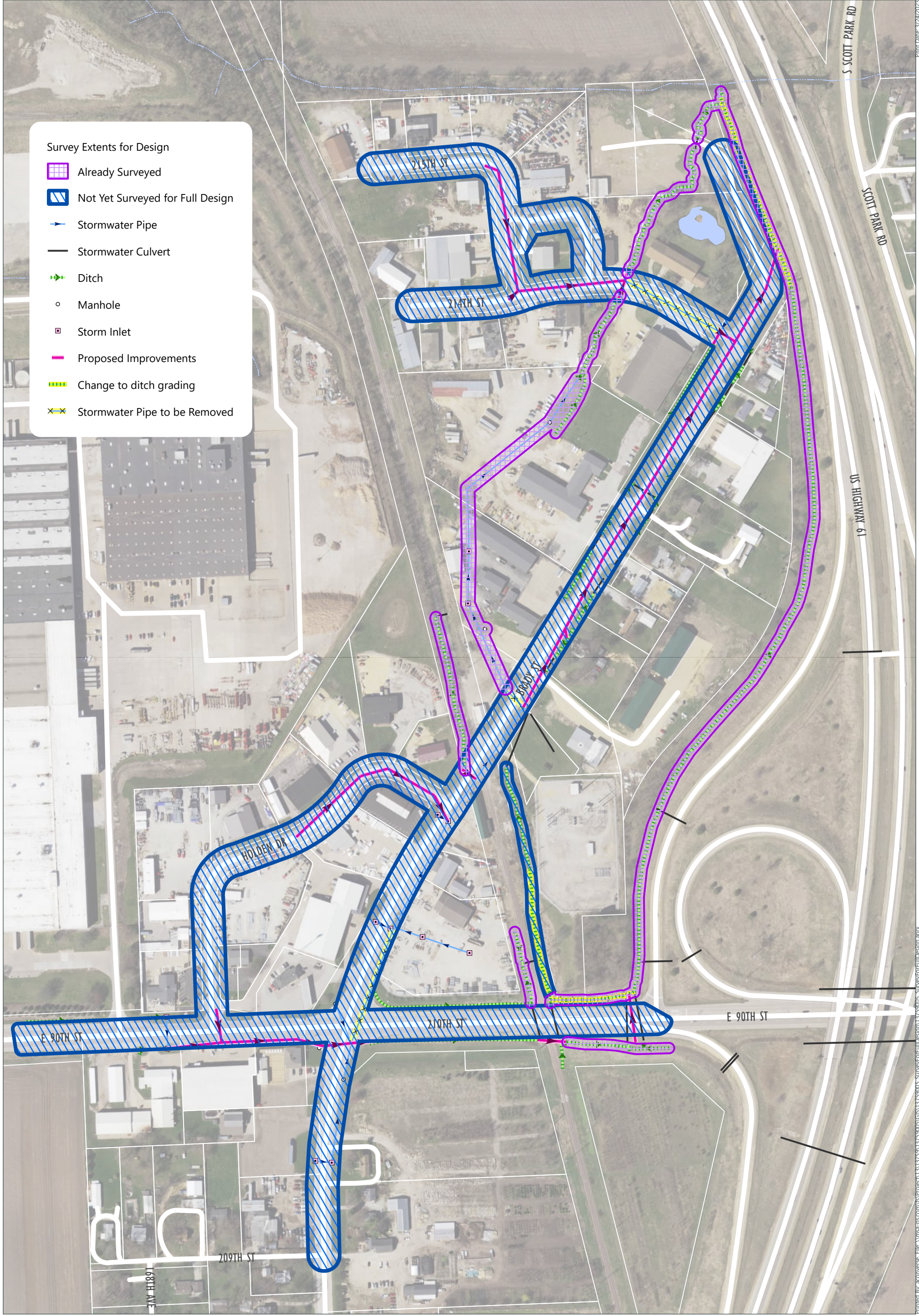
Reconstruction Areas

- Area #1
- Area #2
- Area #3
- Manhole
- Storm Inlet
- Stormwater Pipe
- Stormwater Culvert
- ⋯ Ditch
- ➔ Proposed Improvements
- ✕ Stormwater Pipe to be Removed
- ⋯ Change to ditch grading

Data Sources:
Aerial: IA State



Print Date: 3/24/2025
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Survey Extents for Design

- Already Surveyed
- Not Yet Surveyed for Full Design
- Stormwater Pipe
- Stormwater Culvert
- Ditch
- Manhole
- Storm Inlet
- Proposed Improvements
- Change to ditch grading
- Stormwater Pipe to be Removed



Data Sources:
Roads: Scott County
Parcels: Scott County
Stormwater System: MSA Survey



Exhibit B Survey Extents for Design

Mt Joy
Scott County, IA

THE COUNTY AUDITOR'S SIGNATURE CERTIFIES THAT
THIS RESOLUTION HAS BEEN FORMALLY APPROVED BY
THE BOARD OF SUPERVISORS ON _____
DATE

SCOTT COUNTY AUDITOR

R E S O L U T I O N

SCOTT COUNTY BOARD OF SUPERVISORS

APRIL 13, 2023

APPROVAL OF THE CONTRACT TO PERFORM PROFESSIONAL DESIGN
SERVICES FOR ROAD AND STORMWATER RECONSTRUCTION
PROJECTS IN UNINCORPORATED MT. JOY

BE IT RESOLVED by the Scott County Board of Supervisors as follows:

Section 1. That Scott County enters into a contract with MSA Professional Services, Inc., to perform professional design services for road and stormwater reconstruction projects in unincorporated Mt. Joy, contingent on the unit prices listed in the contract.

Section 2. That the County Engineer be authorized to sign the contract documents on behalf of the Board.

Section 3. That this resolution shall take effect immediately.